



City of Carmel

Carmel Advisory Board of Zoning Appeals Regular Meeting Monday, December 13, 2004

The December meeting of the Carmel Board of Zoning Appeals met at 7:00 PM on Monday, December 13, 2004, in the Council Chambers of City Hall, Carmel, Indiana. The meeting opened with the Pledge of Allegiance.

Members in attendance were Leo Dierckman, James Hawkins, Earlene Plavchak and Charles Weinkauff, thereby establishing a quorum. Jon Dobosiewicz, Angie Conn and Mike Hollibaugh represented the Department of Community Services. John Molitor, Legal Counsel, was also present.

No minutes of previous meetings were submitted.

Mr. Dobosiewicz gave the Department Report. He brought the Board's attention to the two items of correspondence given to them before the meeting. They were both related to items on the agenda.

Mr. Weinkauff asked if they had been entered into the Public Record.

Mr. Dobosiewicz stated that the one addressed to the Department Director, Mike Hollibaugh, was related to the Martin Marietta item in Old Business. The other was a letter to the Board with regard to Items 19-25h, North Augusta, Sec 1 and would be considered Remonstrance.

Mr. Molitor gave the Legal Report. He stated that the Board had been named as respondent in a lawsuit with regard to their decision on October 25, 2004, in which they denied Mr. Yedlick's Appeal of the Director's Determination of the Legal Non-Conforming Use of the Carmel Sand Plant. This petition was filed by William McEvoy, Gregory Policka, Susan Becker, Rex Weiper, Rene Pimentel and Donald Craft. In addition, Martin Marietta, Inc. filed a motion to intervene in order to defend its interests. Also, Mr. Yedlick filed a motion to intervene. To date the Court had not filed a Writ of Certiorari. He did not feel there were any grounds to request the Court not to issue the Writ. In his opinion, the Court would probably issue the Writ of Certiorari before the end of the year to certify its record to the Court. He had discussed it with the Staff to get prepared to make copies of the official record ready for sometime in January. The Board may want to convene an Executive Session to discuss the extent of participation in the legal arguments when it gets before the Court.

H. Public Hearing.

1-10h. 116th/Keystone Retail Shops

The applicant seeks the following development standards variances:

Docket No. 04080027 V	Chapter 14.04.02	60-ft front yard	
Docket No. 04080028 V	Chapter 14.04.03	30-ft side yard	WITHDRAWN
Docket No. 04080029 V	Chapter 14.04.05	30-ft rear yard	

Docket No. 04080030 V	Chapter 14.04.09	80% lot coverage	WITHDRAWN
Docket No. 04080031 V	Chapter 14.06	30-ft greenbelt adjacent to residence	
Docket No. 04080032 V	Chapter 23A.02	120-ft front yard from US 431 R/W	
Docket No. 04080033 V	Chapter 23A.03	30-ft greenbelt along US 431	
Docket No. 04080034 V	Chapter 23A.04	parking prohibited in greenbelt	WITHDRAWN
Docket No. 04080035 V	Chapter 25.07.02-9(b)	number of signs	
Docket No. 04080036 V	Chapter 26.04.05	buffer yards	

The site is located at the northeast corner of 116th St. and Keystone Ave.
The site is zoned B-3/Business within the US 431 Overlay.
Filed by Steve Hardin of Bingham McHale for Eclipse Real Estate, Inc.

Present for the Petitioner: Steve Hardin, 970 Logan Street, Noblesville. Also in attendance were Bryan Chandler and Drew Warner, Eclipse Real Estate and Project Engineer, Dan Schnur, Schneider Engineering. They had worked with the Planning Staff, Plan Commission, Sub Committee and the nearby neighbors. This project is a Redevelopment Project and he highlighted the major issues. One of the key parts of this Redevelopment proposal was that the developer has agreed to make certain improvements for the intersection. The most significant was an additional through travel lane as recommended by the City Engineer's office. The developer has also agreed to donate approximately a quarter acre land for additional right-of-way for future improvements for that intersection. The development team has made written commitments with the Maples of Carmel Homeowners Association Board. The Maples' attorney, Greg Silver, had indicated that Eclipse could state that the Homeowners Board supports the proposal as presented with the Commitments. At the November 16, 2004 meeting, the Plan Commission issued favorable approval for the DP and ADLS plans. The packet gave all the details of the architecture, design and layout of the project.

Members of the public were invited to speak in favor or opposition to the petition: no one appeared.

Mrs. Conn gave the Department Report. The Petitioner worked hard with the Plan Commission and the neighbors to develop a favorable project. The site was a former gas station. This was an opportunity to redevelop the site. The Petitioner had been gracious enough to dedicate more than what was required for the right-of-way. They had beefed up the number of plantings in the bufferyard. The Department recommended positive consideration of all the dockets. The dockets were grouped into three sections for ease in voting: setbacks, greenbelts and buffering, and signage.

Mr. Hawkins asked about the height of the wooden fence.

Mr. Hardin stated that under Tab E in the commitments, it would be six feet, eight inches. The existing fence would be removed and replaced with this new fence. If the existing fence was higher than that, the new fence would be the height of the existing fence.

Mr. Hawkins asked the Department if there was an issue with the height.

Mr. Dobosiewicz stated that the plans were presented to the Plan Commission and it should be acceptable.

Mr. Dierckman asked about some detail on the road improvements relative to setback, easements and road improvements.

Mr. Hardin stated at the present time there is one through lane for the intersection. They would be adding one through lane and building a raised median between the east and westbound lanes. The present Keystone median is cross-hatched. That will be removed to allow the through lanes access to the intersection. They will provide a bike path on their property off of the pavement area.

Mr. Dierckman asked where the two lanes heading east on 116th Street would merge.

Dan Schnur, Schneider Corporation, 6845 E. US 36, Avon. Presently there is a through lane and a right turn lane into the apartment complex on the south side of 116th Street. He stated they were tapering back to the existing curb line before the current right-turn lane ends. It tapers back to one lane east of the entrance into the apartment complex. The raised concrete median extends approximately seventy-five feet beyond the project's property line and is about seventy-five feet from the entrance to The Maples.

Mr. Weinkauff asked for specifics under the number of signs and location.

Mr. Hardin indicated that under Tab C was the Keystone elevation and there would be one wall sign per business. On the 116th Street south elevation there would be one wall sign. There would also be a ground sign which needed the variance. Because it is a corner location, a wall sign would be permitted on each elevation.

Mr. Dobosiewicz stated that both sign types are compliant with the Ordinance whether they select wall or ground signage. Using the two types in combination required the variance. The size and height of the ground sign meets the Ordinance requirements.

Mr. Dierckman asked if the striped awning was calculated as part of the Starbucks Coffee sign since it matched the corporate logo. He felt the striped awnings looked hideous.

Mr. Dobosiewicz stated that it was excluded. The Petition had been reviewed by the Plan Commission under ADLS. There was some concern about multiple awning designs. The character for that area with Merchants Square and Merchants Pointe was a single color for awnings. Dark blue was commonly used in that area. At this location there were four or five different awning colors and stripes.

Discussion continued regarding the logos, colors and stripes of the awnings and making them uniform.

Mr. Dobosiewicz gave the Department Report. The Department recommended favorable consideration and that the Board act on the variances in three sets.

Mr. Dierckman moved to approve **Docket Nos. 04080027V, 04080029V, 04080032V (setbacks), 116th/Keystone Retail Shops**. The motion was seconded by Mr. Hawkins. The Public Hearing was closed. The motion was **APPROVED 4-0**.

Mr. Dierckman moved to approve **Docket Nos. 04080031V, 04080036V, 04080033V (greenbelts and bufferyards), 116th/Keystone Retail Shops**. The motion was seconded by Mr. Hawkins. The Public Hearing was closed. The motion was **APPROVED 4-0**.

Mr. Hardin made the **Commitment** that all awnings would be one color that would be approved by the Department of Community Services.

Mr. Dierckman moved to approve **Docket No. 04080035V (signs), 116th/Keystone Retail Shops**, with the **Commitment**. The motion was seconded by Mr. Hawkins. The Public Hearing was closed. The motion was **APPROVED 4-0**.

Mrs. Torres joined the Board meeting.

11-15h. TABLED: ~~Companion Animal Hospital~~

~~Applicant seeks use variance & development standards variance approvals for veterinary hospital.~~

~~Docket No. 04090009 UV Chapter 19.01 permitted uses~~

~~Docket No. 04090010 V Chapter 27.05 number of parking spaces~~

~~Docket No. 04090023 V Chapter 26.04.05 buffer yard requirements~~

~~Docket No. 04090024 V Chapter 19.04.03 side yard setbacks~~

~~Docket No. 04090025 V Chapter 19.04.02 front yard setback~~

~~The site is located at 1425 S Range Line Rd and is zoned B-8/Business.~~

~~Filed by Jim Shinaver of Nelson & Frankenberger for Dr. Buzzetti.~~

16-18h. TABLED ~~O'Malia Fireplace Shop Expansion~~

~~The applicant seeks the following development standards variances:~~

~~Docket No. 04100017 V Chapter 12.04.02 front yard setback~~

~~Docket No. 04100018 V Chapter 27.03.02 no curbed parking~~

~~Docket No. 04110009 V Chapter 26.04.05 buffer yard requirements~~

~~The site is located at 220 S Range Line Rd. The site is zoned B-1/Business.~~

~~Filed by Paul Reis of Drewry Simmons Pitts & Vornehm for the Helen J. O'Malia Trust.~~

19-25h. North Augusta, Sec 1, lots 10pt-11 and North Augusta, Sec 2, Lot 39

The applicant seeks development standards variances:

Docket No. 04110012 V Chapter 23C.07 3-acre minimum

Docket No. 04110013 V Chapter 23C.08.03.A setback from residential

Docket No. 04110014 V Chapter 23C.10.02.2 foundation plantings

Docket No. 04110015 V Chapter 26.04.05 buffer yard requirements

Docket No. 04110016 V Chapter 23C.10.03.5(b) perimeter plantings

Docket No. 04110017 V Chapter 23C.11.G Drive thru location

Docket No. 04110018 V Chapter 25.07.02-10.(b) signage type

The site is located at the southeast corner of 97th Street and Michigan Rd.

The site is zoned B-2/Business and S-1/Residence (pending rezoning) and is within the US 421 Overlay Zone.

Filed by Chris McComas of Advocati, LLC for My Three Sons Ventures, LLC.

Present for the Petitioner: Christopher McComas, Advocati, Indianapolis. My Three Sons Ventures has a consent form with the property owners A & A Development and Ann Lande. This would be a redevelopment of this unsightly corner. This is a difficult site because of the irregular shape. Also they would be giving away a 30-foot setback along Michigan Road for the greenbelt. The site would be more than three acres if the Landes had not dedicated additional right-of-way for the widening of Michigan Road several times over the years. In the development of the site they would only be able to have a 35-foot setback instead of the required fifty feet. If additional property would turn commercial, it would only require 15-foot setbacks. They had reviewed the foundation and perimeter planting issues with the Urban Forester and had gotten his recommendation. They would be able to accommodate all the total plantings required by the Ordinance, they just could not accommodate them in the way the Ordinance anticipated, due to existing building conditions. They were asking for two drive-thru locations, one on the existing renovated building and one on the new building. The Ordinance anticipates that they would be behind the buildings. There was some impracticality because there was only five feet behind the building and that would not accommodate a drive-thru. The other one would put the drive-thru even closer to the adjacent residential neighborhood. With the Michigan Road Overlay Zone anticipating office space above retail, the second floor tenants would request some signage.

Mr. Weinkauff asked if Mr. McComas had seen a copy of the letter from Mr. Charles Spray.

Mr. McComas stated that the Department had forwarded him a copy of the letter. In conversations with the adjacent homeowner and with the Department, they had agreed to build an eight-foot fence instead of the six-foot fence. They may need a variance in the future for the fence height.

Mr. Weinkauff asked Mr. McComas to address the other points in the letter. Mr. Spray was concerned about the project buffer being 35 feet instead of 50 feet from his residence and reducing the buffer zone from fifteen feet to five feet. This would put the drive-thru twenty feet from his home and places the alignment and lube shop fifty-five feet away. He was concerned about a six-foot fence instead of an eight-foot fence. He felt the petition created a safety hazard with waste and noise due to the close proximity; it would adversely affect the value of his property and affect his family's quality of life.

Mr. McComas stated that due to the configuration of the site and the need to keep the existing businesses in place, with the exception of the existing warehouse and house which is adjacent to Mr. Spray's house, they had to put the new building in a different location than they might have if they had been able to clear the site entirely. He indicated the approximate location of Mr. Spray's house from the County's website, so it may vary by six inches. The existing house, which is adjacent to Mr. Spray, is approximately twenty-five feet from his house. They will be removing that house and building the new retail center approximately fifty plus feet from his garage and sixty feet from his house. The Zoning Ordinance requires a fifteen-foot landscape buffer between commercial and residential uses, but does not require a fence. They are adding the fence in place of the fifteen-foot bufferyard and increasing the landscape commitment. They had offered to purchase Mr. Spray's property and if they had acquired it, they would not have needed these variances.

Mr. Dierckman asked who owned title to Lots 10 and 39 at this point.

Mr. McComas stated that the residential property adjacent to Mr. Spray, Lot 39, is owned by Ann Lande. The other property is owned by A & A Development and there is a consent decree by both owners for My Three Sons to take this through Planning and Zoning.

Mr. Dierckman asked who owned Lots 11A and 12.

Mr. McComas stated that Lots 11 and 12 are owned by Mr. Humphries who operates a retail center on the site. The property abuts the back of the existing residential property. They have met with him and he had no problems with their development.

Members of the public were invited to speak in favor of the petition: no one appeared.

Remonstrance:

Charles Spray, 3745 W. 97th Street, Carmel. His main concern was the distance of the drive-thru from his house. The lube shop is only fifteen feet from his garage and his back door faces that direction. He did not want a drive-thru next to his home.

Rebuttal:

Mr. McComas pointed out the proposed site layout on page 7 of the packet. The proposed drive-thru would be on the north side of the two-story building. It would be approximately 80 feet back from the east edge of the building and there would be queuing space. This was originally designed for a drive-thru for a CVS Drugstore. They have not been able to consummate that lease. The dotted line running perpendicular to Mr. Spray's property line was the fifty-foot setback line. The entire drive-thru, including all the stacking space, would be beyond that fifty-foot setback line. The cars and noise would be headed away from Mr. Spray's property. The Ordinance requires the drive-thru to be at the back of the site, as opposed to the side, which would move the drive-thru closer to his property. He showed on the overhead the direction the cars would be moving. The curb cut would be on 97th Street because that would work best for traffic. They would prefer it to be closer to Michigan Road, but the County has a requirement that requires it to be 250 feet back from the center line of Michigan Road. He pointed out how trucks and traffic would turn, park and move on the site.

Mr. Dierckman asked the distance from the edge of the building to Mr. Spray's property line.

Mr. McComas stated that it was thirty-five feet.

Mrs. Plavchak stated that since they do not have a lease with CVS, there may not be a need for a drive-thru.

Mr. McComas stated that they were approaching other drug stores and businesses that might need the drive-thru.

Mr. Dierckman stated that maybe they were squeezing too much on this property which has been built all around.

Mr. Dobosiewicz stated that the entire neighborhood, from Shelborne Road to US 421, north from 96th Street to the Duke project, had been identified for several years on the Comprehensive Plan, as well as the Zoning Ordinance, for redevelopment. Many of the properties in this area have changed from

residential to commercial. He discussed other parcels in the area. The driveway would be adjacent to the Spray property, not the drive-thru. The variance would be required to place the drive-thru on the north side of the building which is further away from the residential area, rather than the required east side. There is a driveway along the east that accesses around the building. It is not part of the drive-thru where cars will be stacking for entrance to the drive-thru window.

Discussion continued on the location of the driveway, drive-thru location and businesses that could use that drive-thru.

Mr. Molitor added for the Board's consideration that the Ordinance requires a minimum number of spaces measured from the drive-thru window according to the type of use: five for bank teller, three for ATM, ten for restaurant, five for car wash, and three for gas pump island. For any other use, the number would be determined by the Director. The Board could specify a minimum number of spaces that would have to be provided.

Mr. Dierckman was concerned that the southeast corner of the building was only thirty-five feet from the property line. That seemed to be imposing upon the property line.

Mr. McComas stated that the configuration of the building was because of the existing buildings on the property. They would apply for a variance for an eight-foot fence.

Mrs. Conn stated that because it was in a commercial zone, it did not need a variance for the fence.

Mr. Weinkauff wanted clarification from Mr. Spray's letter. Mr. Spray stated that the Carmel Ordinance moved the project from 50 feet to 35 feet from his residence and reduced the buffer zone from 15 feet to 5 feet and that the pick-up window would be 20 feet from his home.

Mr. McComas stated that the pick-up window would not be 20 feet from Mr. Spray's home.

Mr. Dobosiewicz pointed out on page 7 in the packet that the dash line that ran parallel to Mr. Spray's property was fifty feet from Mr. Spray's property line. There was at least double that before the drive-thru window. So there was approximately 120 to 130 feet between the property line and drive-thru window.

Discussion continued on the location of the window and Mr. Spray's home, the driveway for semi trucks and the landscape buffer.

Mr. Hawkins asked about compensation of the dedicated right-of-way.

Mr. McComas stated that some had been donated and some had been compensated. For this particular parcel they have to donate and dedicate right-of-way for the potential widening of 97th Street and additional right-of-way along 96th Street for widening. He believed they were compensated for the right-of-way for the widening of Michigan Road.

Mr. Dierckman stated that if the building was reduced in size then everything could be shifted back and then the lube shop would be at least fifty feet from the property line and they would not have to

deal with the setback issue. It was encroaching on the setback by about fifteen feet from the buffer. A lot of noise comes out of lube shops.

Mr. Dobosiewicz stated that it appeared that the building encroaches between five and fifteen feet on the fifty-foot line. With the additional right-of-way that was granted to the State of Indiana for the improvements to US 421, they were allotting for a standard 30-foot greenbelt along US 421. If the Board was inclined, the Department would support a request for relief of ten feet for the 30-foot greenbelt. That would allow everything to slide west and closer to highway. There was adequate right-of-way today that the State had to accommodate two additional northbound lanes. If the Board felt comfortable, he felt the Petitioner could accommodate a fifteen-foot greenbelt and an approximate forty-eight out of the fifty-foot setback. That would give them the Ordinance prescribed fifteen-foot landscape strip and forty-eight to fifty feet for the building setback. It would require notice and action by the Board. They could propose a Hearing Officer for sometime in early January.

Mr. McComas stated that the Petitioner would support that as well. If they could get relief from the front, then they could push it away from Mr. Spray's property. They would need a variance for the 30-foot yard.

Mr. Dobosiewicz stated that the Board could act on all the variances now, except 04110013V and 04110015V. They could be forwarded to the Hearing Officer with the fees waived for the additional variance. It was substantially compliant with what the Plan Commission approved, so it would not need to be forwarded to the Plan Commission. He recommended January 4, 2005 for the Hearing Officer before the Plan Commission Committee meetings. Notice would need to be sent.

Mr. Weinkauff stated that he hoped Mr. Spray was happy with the efforts taken to improve his quality of life and property.

Mr. Hawkins had a question regarding the signage. There was a wide variety of signs presented on page 17 with several colors and types. There was usually a more concrete idea of the signage.

Mr. McComas stated that on page 21 there were commitments regarding the colors and signage allowed. There would be five types. There would be large letter signs for the two-story building, perpendicular signs for the two-story building, letter signs for the one-story building, letter signs for the small building and a monument sign for the entire center. Page 19, sign type B was what the variance was discussing, which was providing signage for second floor tenants. It would be perpendicular to the building as opposed to mounted to the building. It would allow a more historic looking façade as opposed to just letters on the second floor. Photos of similar signs in the area were on page 17. He did not have any signed letters of intent so he could not provide specific details for signage.

Mrs. Conn gave the Department Report. She stated that Jon Dobosiewicz had already given the Department's suggestions and they were recommending positive consideration.

Mr. Dierckman moved to move **Docket Nos. 04110013V and 04110015V** to the Hearing Officer and to waive all associated fees. The motion was seconded by Mrs. Torres and **APPROVED**.

The Public Hearing was closed on all the Dockets.

Mr. Dierckman moved to approve **Docket No. 04110012V (3-acre minimum), North Augusta, Sec 1, lots 10 pt-11 and North Augusta, Sec 2, Lot 39.** The motion was seconded by Mrs. Plavchak and **APPROVED 5-0.**

Mr. Dierckman moved to approve **Docket No. 04110014V (foundation plantings), North Augusta, Sec 1, lots 10 pt-11 and North Augusta, Sec 2, Lot 39.** The motion was seconded by Mrs. Plavchak and **APPROVED 5-0.**

Mr. Dierckman moved to approve **Docket No. 04110016V (perimeter plantings), North Augusta, Sec 1, lots 10 pt-11 and North Augusta, Sec 2, Lot 39.** The motion was seconded by Mr. Hawkins and **APPROVED 5-0.**

Mr. Dierckman moved to approve **Docket No. 04110017V (drive-thru location), North Augusta, Sec 1, lots 10 pt-11 and North Augusta, Sec 2, Lot 39.** The motion was seconded by Mr. Hawkins and **APPROVED 5-0.**

Mrs. Plavchak moved to approve **Docket No. 04110018V (signage type), North Augusta, Sec 1, lots 10 pt-11 and North Augusta, Sec 2, Lot 39** with the **Condition** that all perpendicular signs be uniform in color and size. The motion was seconded by Mr. Dierckman. Mr. Hawkins asked if the Department was happy with the signage. Mr. Dobosiewicz stated that the Department was looking for uniformity in the signage. The motion was **APPROVED 5-0.**

A ten-minute recess was taken.

I. Old Business.

1h. Martin Marietta Materials - Mueller Property South

The petitioner seeks special use approval for a sand and gravel extraction operation.

Docket No. 04040024 SU Chapter 5.02.02 special use in the S-1 zone

The site is located at the southwest corner of the intersection of East 106th Street and Hazel Dell Parkway. The site is zoned S-1/Residence - Low Density.

Filed by John Tiberi of Martin Marietta Materials, Inc.

Mr. Molitor stated that at the end of the last meeting, he and the Staff were directed to assemble a slate of Commitments. Not necessarily a slate that was agreeable to Martin Marietta or to the Remonstrators, but one that reflected the preferences of the Board as discussed during the last meeting. The Staff had assembled them and the Board could go through them and ask any questions. If the set of Commitments was complete and reflected the Board's discussion, then under the Rules the item was close to a vote subject to any further report from the Department.

Mr. Dobosiewicz explained the documents before the Board. The Department Report included the report which was basically a reiteration of what the Board had seen in the past. The one addition was in the section entitled Recommendation which referred to seeking reimbursement for expenses associated with review. The Department withdrew the request that reimbursement be attached as a Condition. Item #2 included a red line copy of the document the Board had reviewed at the last meeting. Item #3 was a clean copy of the red line version. Item #4 was the ballot sheet provided by the Petitioner and

Item #5 was the Findings of Fact provided by the Petitioner. He had an additional copy of the ballot sheet as well as the Findings of Fact and Commitments. The only difference between this additional copy and what was handed out the previous week was last week's handouts were not labeled as Exhibit A and Exhibit B as the ballot sheet identified.

Mr. Molitor recalled there was a typo or two in the legal description, but he did not think they had been corrected. The ballot reflected the Board's normal practice that all motions must be made in the affirmative. If any Board member wished to make a vote in the negative to disapprove the Petition, that would require a motion to suspend the rules. Failing a suspension of the rules, this ballot would give each member of the Board the option to vote any of three ways: 1) accept the motion with the Commitments attached as they had been distributed; 2) accept the petition with Commitments with any additional Conditions that the Board member wanted to impose; 3) deny the petition.

Mr. Dobosiewicz called the Board's attention to the letter to Mike Hollibaugh, copying Mayor Brainard and Zeff Weiss, from Bill McEvoy and Greg Policka, residents of the Kingswood neighborhood.

Mr. Weinkauff asked Mr. Weiss to comment on the letter and the potential global settlement.

Zeff Weiss, 3400 One America Square, Indianapolis. He received the fax late in the morning. They had met in a series of meetings and he saw no reason to delay. Their counsel's comment today was that even if they could reach an agreement, it was long way off. They would continue to work with them.

For clarification: Exhibit A was Martin Marietta's proposed Findings of Fact and conclusions of law. Exhibit B was the Statement of Commitments. The red line version was the document from the previous meeting that was the Department's version of the Commitments, along with Mr. Molitor's comments, that the Board had walked through and then the Department modified in accordance with the Board's discussion. The clean copy was Exhibit B, the Statement of Commitments and it had been included as part of the Petition and would be recorded if approved.

Mr. Dierckman stated that he had been through his original marked version, compared it to the marked up version and the final version and he believed all the comments from the last meeting had been incorporated into Exhibit B which was attached to the ballot.

Mr. Hawkins wanted clarification on the 96th Street exit, Item #5A. He wanted to know if any language needed to be included in case the processing plant was moved.

Mr. Weiss stated that any move of the plant would require the Board's approval and they would address whatever was appropriate at that time.

Mr. Molitor added if there was some change with regard to the relocation of the processing plant, it could require an amendment to one of these Commitments and could be combined with a Hearing on the approval of the relocation of the processing plant.

Mr. Dierckman wanted a point of clarification from the Staff that they were in agreement with Martin Marietta's Findings of Fact and conclusions of law.

Mr. Dobosiewicz stated that if the Board approved the Petition they would ask that they approve it subject to those Findings of Fact and conclusion of law.

Mr. Hawkins asked Mr. Molitor if there was any concern with Exhibit A.

Mr. Molitor felt that the Findings of Fact accurately reflected the previous discussions. Just because they have been submitted, does not mean the Board agrees that those facts have all been proven. But the form was proper and Martin Marietta would have to defend the Findings if they would end up in Court.

Mr. Dierckman moved to approve **Docket No. 04040024SU, Martin Marietta Materials – Mueller Property South** subject to the Commitments as outlined by Exhibit B attached to the ballot and approval of the Findings of Fact as outlined in Exhibit A. The motion was seconded by Mr. Hawkins. The Public Hearing had been closed at a previous meeting.

Mr. Dobosiewicz stated for clarification that #1 on the ballot was to adopt the Petition as stated by Mr. Dierckman and #2 would be if the Board was inclined to attach an additional Condition to the approval.

The motion was **APPROVED 4-1** as stated in #1, with Mr. Weinkauff casting the negative vote.

Mr. Dobosiewicz asked the Board to sign one set of the Findings for the record.

J. New Business.

- 1j. Proposed amendments** to Article IX (BZA Rules of Procedure), Section 30.08: Alternate Procedure (Hearing Officer), and Chapter 21: Special Uses.

This item was Tabled until the next meeting.

K. Adjourn.

Mrs. Plavchak moved to adjourn. The motion was seconded by Mrs. Torres and **APPROVED 5-0.**

The meeting was adjourned at 9:30 PM.

James R. Hawkins, President

Connie Tingley, Secretary